IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7714 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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YOGESHKUMAR VALLABHDAS KALAIYA - Petitioner(s)

Versus

JETPUR NAGAR PALIKA - Respondent(s)

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Appearance :

MR HRIDAY BUCH for Petitioner(s) : 1,
MR RR TRIVEDI for Respondent(s) : 1,
MR BHAVESH P TRIVEDI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 02/12/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 09.04.2001 passed by Labour Court, Rajkot in reference (LCR) No.650/91 whereby the Labour Court has rejected the reference of the petitioner on the ground that the

petitioner's appointment was for a fixed period and since period of appointment was over in view of the provisions of Section 2(oo)(bb), the services of the petitioner were not extended or the contract was not renewed.

2. The brief facts of the case are that the petitioner was appointed by the respondent-Nagar Palika as Octroi clerk for the first time for 90 days w.e.f. 05.04.89 to 03.07.89. Alongwith the petitioner three other persons were also appointed on the said posts as Octroi Clerk. Moreover, the petitioner and other persons appointed as daily wagers were given appointment orders for the period of three months continuously on the expiry of the earlier appointment order. The respondent terminated the services of the petitioner as well as all other daily wagers from 28.12.90 without following proper procedure under the Industrial Disputes Act, 1947. Being aggrieved by the termination, certain similarly aggrieved workmen raised an industrial dispute and the same was referred to the Labour Court, Rajkot for adjudication. The Labour Court directed the respondent to reinstate the three similarly situated employees in reference nos. 389/91, 390/91, 653/91 except the petitioner.

3. Mr Hriday Buch, learned advocate for the petitioner

has drawn my attention to the judgement of the Labour Court in reference (LCR) No. 389/91, 390/91, 653/91 against the same Nagar Palika whereby in para 16, the Labour Court has observed that the workmen had served the NagarPalika continuously for more than 240 days and they were discharged from service by the respondent Nagar Palika on 27.12.90 without paying any notice pay or retrenchment compensation. It also observed that even at the time of new recruitment the workmen were not recalled and thus the action of the respondent Nagar Palika was in violation of Sec.25F of the Industrial Disputes Act and all the workmen deserve to be reinstated with continuity of service. As a result, the employees who were appointed on the same day and relieved on the same day with identical conditions were restored by the respondent Nagar Palika as per the direction of the Labour Court.

4. In that view of the matter, without entering into the merits of the matter, I am of the opinion that the same Labour Court(though different Judge) has taken a different view in the case of the petitioner to the one taken on 28.09.2000. I am, therefore, of the opinion that on the facts and circumstances of the case, it is desirable to remand the matter to the Labour Court for reconsideration of the same keeping in mind the

principles laid down by or finding given by the Labour court in reference (LCR) Nos. 389/91, 390/91 and 653/91. It is made clear that it will be open for both the parties to lead evidence in the matter.

5. In the premises aforesaid, the petition is partly allowed. The award of the Labour Court is quashed and set aside. The matter is remanded to the Labour Court for fresh consideration. The Labour Court will complete the said exercise within four months from the date of receipt of the writ of this court. Rule is made absolute accordingly with no order as to costs.

(K.S. JHAVERI, J.)

Divya//